

HOUSE BILL 341  
By Newton

AN ACT to amend Tennessee Code Annotated, Section  
55-10-406, relative to a driver's implied consent to  
submit to certain tests.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-10-406, is amended by deleting  
subsection (a) in its entirety and substituting instead the following:

(a)

(1) Any person who drives a motor vehicle in this state is deemed to have  
given consent to a test for the purpose of determining the alcoholic content of  
that person's blood and a test for the purpose of determining the drug content of  
such person's blood; provided, no such test or tests may be administered  
pursuant to this section unless at the direction of a law enforcement officer  
having reasonable grounds to believe such person was driving while under the  
influence of an intoxicant or drug as prohibited by § 55-10-401 or such person is  
involved in a motor vehicle accident involving personal injury or death. For the  
results of such test or tests to be admissible as evidence, it must first be  
established that all tests administered were administered to the person within two  
(2) hours following such person's arrest or initial detention.

Any physician, registered nurse, licensed practical nurse, clinical laboratory  
technician, licensed paramedic or, notwithstanding any other provision of law to the  
contrary, licensed emergency medical technician approved to establish intravenous  
catheters, or technologist, or certified or nationally registered phlebotomist who, acting at  
the written request of a law enforcement officer, withdraws blood from a person for the

purpose of conducting either or both such tests, shall not incur any civil or criminal liability as a result of the withdrawing of such blood, except for any damages that may result from the negligence of the person so withdrawing. Neither shall the hospital nor other employer of the previously listed health care professionals incur, except for negligence, any civil or criminal liability as a result of the act of withdrawing blood from any person.

(2) Any law enforcement officer who requests that the driver of a motor vehicle submit to either or both tests authorized pursuant to this section for the purpose of determining the alcohol or drug content of the driver's blood shall, prior to conducting either test, advise the driver that refusal to submit to the test will result in the suspension of the driver's operator's license by the court and, if such driver is driving on a revoked, suspended or cancelled license, when the person's privilege to do so is cancelled, suspended or revoked because of a conviction for vehicular assault under § 39-13-106, vehicular homicide under § 39-13-213, aggravated vehicular homicide under § 39-13-218, or driving under the influence of an intoxicant under § 55-10-401, that the refusal to submit to such test will, in addition, result in a fine and mandatory jail or workhouse sentence. The court having jurisdiction of the offense for which such driver was placed under arrest shall not have the authority to suspend the license of a driver who refused to submit to either or both tests if the driver was not advised of the consequences of such refusal.

(3) If such person having been placed under arrest and thereafter having been requested by a law enforcement officer to submit to either test and advised of the consequences for refusing to do so, refuses to submit, the test to which the person refused shall not be given, and such person shall be charged with

violating this subsection. The determination as to whether a driver violated the provisions of this subsection shall be made at the same time and by the same court as the one disposing of the offense for which such driver was placed under arrest. If the court finds that the driver violated the provisions of this subsection, except as otherwise provided in this subdivision, the driver shall not be considered as having committed a criminal offense; however, the court shall revoke the license of such driver for a period of:

(A) One (1) year, if the person does not have a prior conviction for a violation of § 55-10-401, § 39-13-213(a)(2), § 39-13-218, § 39-13-106, or § 55-10-418 in this state or a similar offense in any other jurisdiction.

(B) Two (2) years, if the person does have a prior conviction for an offense set out in subdivision (A).

(C) Two (2) years, if the court finds that the driver of a motor vehicle, involved in an accident in which one (1) or more persons suffered serious bodily injury, violated this subsection by refusing to submit to such a test.

(D) Five (5) years, if the court finds that the driver of a motor vehicle, involved in an accident in which one (1) or more persons are killed, violated this subsection by refusing to submit to such a test.

For the purposes of this subdivision, "prior conviction" means a conviction for one (1) of the designated offenses, the commission of which occurred prior to the DUI arrest giving rise to the instant implied consent violation.

In addition to the consequences set forth in this section, if the court or jury finds that the driver violated the provisions of this subsection while driving on a revoked, suspended or cancelled license, when the person's privilege to do so is cancelled,

suspended or revoked because of a conviction for vehicular assault under § 39-13-106, vehicular homicide under § 39-13-213, aggravated vehicular homicide under § 39-13-218 or driving under the influence of an intoxicant under § 55-10-401, such driver commits a Class A misdemeanor and shall be fined not more than one thousand dollars (\$1,000) and shall be sentenced to a minimum mandatory jail or workhouse sentence of five (5) days which shall be served consecutively, day for day, and which sentence cannot be suspended.

(4) Any person who violates the provisions of this section by refusing to submit to either test pursuant to subdivision (3) shall be charged by a separate warrant or citation that does not include any charge of violating § 55-10-401 that may arise from the same occurrence.

(5) Any driver of a motor vehicle who dies as the result of a motor vehicle accident shall be deemed to have given consent to a test for the purpose of determining the alcoholic content of that person's blood and a test for the purpose of determining the drug content of such person's blood.

SECTION 2. Tennessee Code Annotated, Section 55-10-406, is further amended by deleting the word "test" wherever else it appears in such section and substituting instead the language "test or tests."

SECTION 3. This act shall take effect July 1, 2005, the public welfare requiring it.